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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,066	12/09/2003	Gary L. Mercer	018853.0753	2940

24735 7590 08/18/2006

BAKER BOTTS LLP  
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WASHINGTON, DC 20004-2400

EXAMINER
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ALEXANDER, REGINALD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/730,066		MERCER ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Reginald L. Alexander		1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-11, 14-16 and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Bishop et al.

There is disclosed in Bishop a fryer, comprising: a cooking vessel 82 containing a cooking medium, the vessel having a side wall; means 156 for heating the cooking medium; a first temperature sensor 174, 94 for determining a first temperature indicative of the cooking medium or air within the vessel; a second temperature sensor 160 to determine a second temperature indicative of the vessel wall; and a controller which receives signals from the sensors to control the heater.

In regards to the claimed operation of the controller based upon the received sensor temperatures, such is functional and provides no structural limitations. Applicant's use of the phrase "adapted to" only requires the claimed structure be capable of performing in the recited manner. It is clear that the controller can be "adapted to" compare temperature signals and operate the heater accordingly.

Claims 23, 29-32 and 36-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Nitschke et al.

There is taught in Nitschke the operation of a fryer and replacement of cooking medium therefor, wherein a first temperature of the cooking medium is detected by a first sensor 236; determining a second temperature of a wall of the cooking vessel by a second sensor 238; deactivating a means for heating when the difference between the second and first temperatures is greater than a predetermined temperature difference.

In regards to claims 29 and 30, it has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 41 and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Tateyama.

There is disclosed in Tateyama a fryer, comprising: a cooking vessel 3 containing a cooking medium; means 4 for heating the cooking medium; a temperature sensor 17 which determines the temperature of a wall of the cooking vessel; a controller 24 coupled to the sensor, wherein the controller deactivates the means for heating when the temperature is greater than a predetermined temperature (230-240 degrees celcius).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al. in view of McNamara.

McNamara discloses that it is known in the art to use a gas burner to heat a fryer.

It would have been obvious to one skilled in the art to substitute the heating source of Bishop with that disclosed in McNamara, in order to provide an alternative heating means.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al. in view of Benedictus et al.

Benedictus discloses that it is known in the art to affix a temperature sensor to a means for heating a cooking medium.

It would have been obvious to one skilled in the art to modify the device of Bishop with that taught in Benedictus and mount one of the sensors on the heating device, in order to provide an alternative location for obtaining a temperature reading.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al. in view of Davis et al.

Davis discloses that it is known in the art to use an audible alarm to indicate to the user the condition of the heater or frying apparatus.

It would have been obvious to one skilled in the art to substitute the lights of Bishop for the audible alarm taught in Davis, in order to provide an alternative means for indicating to the user.

Claims 24-28 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nitschke et al. in view of Tateyama.

Tateyama, as discussed above, discloses temperature sensor 17 which determines the temperature of a wall of the cooking vessel; a controller 24 coupled to the sensor, wherein the controller deactivates the means for heating when the temperature is greater than a predetermined temperature (230-240 degrees celcius); wherein the sensor is located below a first sensor for determining the temperature of the cooking medium.

It would have been obvious to one skilled in the art to provide Nitschke with the operational step of deactivating the heating means when the first temperature is equal to a further predetermined temperature as taught in Tateyama, in order to prevent damage to the device.

In regards to claim 27, the claimed temperature difference is an obvious matter of design choice to one skilled in the art, since termination of the heating means is done as a safety feature. One skilled in the art would determine at what temperature difference safety of the device is being compromised.

In regards to claim 28, it has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure.

Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nitschke et al. in view of Benedictus et al.

Benedictus discloses that it is known in the art to affix a temperature sensor to a means for heating a cooking medium.

It would have been obvious to one skilled in the art to modify the device of Nitschke with that taught in Benedictus and mount one of the sensors on the heating device, in order to provide an alternative location for obtaining a temperature reading.

Claims 43-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tateyama in view of Nitschke et al.

There is taught in Nitschke the operation of a fryer and replacement of cooking medium therefor, wherein a first temperature of the cooking medium is detected by a first sensor 236; determining a second temperature of a wall of the cooking vessel by a second sensor 238; deactivating a means for heating when the difference between the second and first temperatures is greater than a predetermined temperature difference.

It would have been obvious to one skilled in the art to modify the device of Tateyama with that taught in Nitschke, in order to provide an alternative way of deactivating the heating.

In regards to the claimed operation of the controller based upon the received sensor temperatures, such is functional and provides no structural limitations.

***Response to Arguments***

Applicant's arguments filed 05 July 2006 have been fully considered but they are not persuasive. Applicant argues that Bishop fails to disclose or suggest deactivating the means for heating when at least one of the predetermined conditions from claim 1 are satisfied. As noted in the rejection, the operation of the controller is not structurally limiting. The operational steps are intended use and the only definitive structural limitation is that of a controller. Bishop discloses all of the structural limitations of the claim.

Applicant's arguments with respect to claims 23 and 41 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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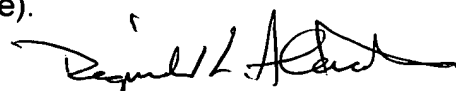
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rla  
07 August 2006



Reginald L. Alexander  
Primary Examiner  
Art Unit 1761